

STATE OF WASHINGTON

Phone: (360) 725-7000

FILED

JAN 27 2006

Hearings Unit, OIC
Patricia Petersen
Chief Hearing Officer

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

DECLARATION OF MAILING

I declare under penalty of perjury
under the laws of the State of
Washington that on the date listed
below, I mailed or caused delivery
of a true copy of this document to
parties listed below
DATED this 30 day of January 2006
at Tumwater, Washington.

Signed: Wendy Galloway



OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT

Fax: (360) 664-2782

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Wendy Galloway
Administrative Assistant
WendyG@OIC.wa.gov.
(360) 725-7002

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:

EVOLUTION SERVICES, INC.,

Unauthorized entities,

and

WILLIAM J. MILLER, STANTON L. CALL,
WILLIAM R. OWENS, BARBARA MILLER,
JOHN C. RIVERA, JESSE C. RIVERA,
LISA A. COLEMAN, DAVID EMERSON LEE,
M.D., KENNETH KAISER, SR., and
CHRIS KOMARZEC,

Individual Respondents.

NO. D05-364

**ORDER COMPELLING DISCOVERY
AND SCHEDULING HEARING ON
ISSUE OF SUBJECT MATTER
JURISDICTION**

TO: Thao Tredt, Esq.
Gulliver Swenson, Esq.
Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John Hamje, Deputy Commissioner, Consumer Protection
Carol Sureau, Deputy Commissioner, Legal Affairs
Charles Brown, Sr. Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Mailing Address: P.O. Box 40255 • Olympia, WA 98504-0255
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501



ORDER COMPELLING DISCOVERY & SCHEDULING
HEARING ON ISSUE OF SUBJECT MATTER JURISDICTION
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On January 23, 2006, the undersigned held a prehearing conference in this matter to hear argument on the Insurance Commissioner's (OIC) Motion to Compel Discovery. In response to the OIC's Motion to Compel Discovery, the above referenced entity and individuals (Evolution) filed a Motion to Stay Motion to Compel Pending Determination of Subject Matter Jurisdiction, and therefore both Motions were argued at the same time. The OIC was represented by Charles Brown, Sr. Staff Attorney, and Evolution was represented by Gulliver Swenson, Esq.

Briefly, in its Motion to Stay Motion to Compel, Evolution argued that it is unclear whether the undersigned had jurisdiction to determine the subject matter of this case and that therefore the Motion to Compel Discovery should be denied. Evolution did, however, acknowledge that the undersigned has jurisdiction to determine whether she has subject matter jurisdiction. Although the position of the OIC is that the undersigned does have subject matter jurisdiction, it was agreed that this proceeding should take place in two parts: first, the undersigned will accept briefs, hear argument and decide whether she has subject matter jurisdiction and, second, if it is decided that she has subject matter jurisdiction then the hearing in the case in chief will take place thereafter.

Accordingly, the undersigned heard argument concerning each discovery request which was the subject of the OIC's Motion to Compel and ruled orally during the proceeding on the OIC's Motion to Compel as follows:

1. The parties are advised that, although the wording in some of discovery in this case refers to "insurance," "policy," "insurer," and other wording which is possibly not specifically relevant to the product involved herein (e.g. Interrogatory Nos. 6 and 7), the parties are to understand that said Interrogatories and Requests throughout the discovery in this case refer to the product relating to the operations of Evolution and are not limited to the technical definition of those terms. The parties are also advised that by delivering any documents or other information in response to this discovery Evolution is not admitting or otherwise bound by any implied definition of said documents or other information.
2. Interrogatory 5: Compel.
3. Request for Production 4: Compel
4. Interrogatory 6: Compel.
5. Interrogatory 10: Compel.
6. Interrogatory 11: Compel.
7. Interrogatory 20: Not compelled as not relevant to determination of subject matter jurisdiction..
8. Interrogatory 21: Not compelled as not relevant to determination of subject matter jurisdiction..
9. Interrogatory 22: Not compelled as not relevant to determination of subject matter jurisdiction.

ORDER COMPELLING DISCOVERY & SCHEDULING
HEARING ON ISSUE OF SUBJECT MATTER JURISDICTION
Page 3

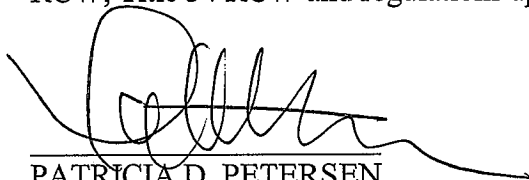
10. Evolution is advised that it shall respond fully to each Interrogatory and the Request for Production and shall not assume that the OIC already has any portion of the information requested.

Based upon the above activity,

IT IS HEREBY ORDERED that Evolution shall respond, in full, to Interrogatory Nos. 5, 6, 10 and 11 and Request for Production No. 4.

IT IS FURTHER ORDERED that the hearing on the issue of whether the undersigned has jurisdiction over the subject matter involved in this case shall be held commencing on March 2, 2006 at 9 a.m., room 120, in the Office of the Insurance Commissioner, Tumwater, WA as further detailed in Notice of Hearing to be entered separately. Evolutions brief on this issue shall be filed by close of business on February 8, 2006 and the OIC's brief on this issue shall be filed by close of business on February 22, 2006. Either party which wishes to file additional briefs or other documents may do so before commencement of the hearing on March 2, 2006.

ENTERED at Tumwater, Washington this 27th day of January, 2006, pursuant to Title 48 RCW, Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Presiding Officer

STATE OF WASHINGTON

Phone: (360) 725-7000

MIKE KREIDLER
STATE INSURANCE COMMISSIONER



FILED

DECLARATION OF MAILING

I declare under penalty of perjury
under the laws of the State of
Washington that on the date listed
below, I mailed or caused delivery
of a true copy of this document to

parties below
DATED this 23 day of January 2006
at Tumwater, Washington.

Signed: Wendy Galloway

OFFICE OF
INSURANCE COMMISSIONER

2006 JAN 23 P 1:42

HEARINGS UNIT
Fax: (360) 664-2782

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Patricia D. Petersen
Chief Hearing Officer

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M.D., KENNETH KAISER, SR., and
CHRIS KOMARZEC,

Individual Respondents.

NO. D05-364

ORDER ON EVOLUTION SERVICES,
INC.'S AND SPECIFIED INDIVIDUALS'
MOTION FOR AUTOMATIC STAY

TO: Thao Tredt, Esq.
Gulliver Swenson, Esq.
Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John Hamje, Deputy Commissioner, Consumer Protection
Carol Sureau, Deputy Commissioner, Legal Affairs
Charles Brown, Sr. Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

ORDER ON EVOLUTION SERVICES

No. D05-364

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On September 23, 2005, the undersigned held a prehearing conference in this matter, which included all parties. During that prehearing conference, Brian Kreger, Esq., who was then attorney for Evolution Services, Inc. and specified individuals named herein (together referred to as ESI), argued that at least one portion of the subject Order to Cease and Desist should be automatically stayed. The undersigned requested that the parties brief the issue presented, which briefs were filed timely as requested.

RCW 48.04.020 provides as follows:

- (1) Such demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken by him shall stay such action pending the hearing,*
- (2) In any case where an automatic stay is not provided for, and if the commissioner after written request therefore fails to grant a stay, the person aggrieved thereby may apply to the superior court for Thurston county for a stay of the commissioner's action.*

ESI acknowledges that the subject Order to Cease and Desist bears the advisement that *THIS ORDER IS EFFECTIVE IMMEDIATELY and is entered at Tumwater, Washington, this 26th day of July, 2005* and was served on that date. ESI also acknowledges that it filed its Demand for Hearing on September 9, 2005, 45 days after the effective date of the Order. However, ESI points out that the one provision of said Order at issue in this Motion, which is included on page 3 of the Order, states *IT IS FURTHER ORDERED that Respondents, within forty-five (45) days of receipt of this Order, furnish the OIC with a complete listing, to include contact information, of all Washington residents and businesses who have purchased any insurance or insurance-related product from Respondents, and that Respondents report to the OIC all premiums received by Respondents for insurance covering Washington risks.* ESI argues that this portion of the Order, which requires specified action of ESI within 45 days i.e. by September 9, 2005, has been automatically stayed by virtue of RCW 48.04.020(1) and the fact that ESI filed its Demand for Hearing on the 45th day referred to in the Order.

The Commissioner argues that RCW 48.04.020 provides, in (1), that *[S]uch demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken ... shall stay such action pending the hearing* refers to the effective date of the entire Order and not to any individual portions which may be included in the Order.

The undersigned agrees with the argument of the Commissioner: RCW 48.04.020(1) refers solely to the effective date of the entire Order to Cease and Desist, which is, as stated therein, July 26, 2005. The subject portion of the Order which is included on page 3 provides a 45 day courtesy period in which ESI is given to be able to comply with the Order e.g. *to furnish the OIC with a complete listing, to include contact information, of all Washington residents and businesses who have purchased any insurance or insurance-related product from Respondents, and that Respondents report to the OIC all premiums received by Respondents*

ORDER ON EVOLUTION SERVICES

No. D05-364

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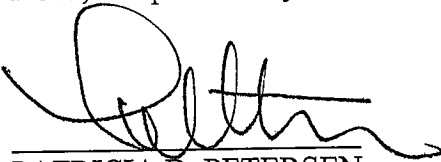
for insurance covering Washington risks. However, even this portion of the Order is effective July 26, 2005 and that is the date upon which the 45 day period begins to run; it does not create a separate window which would be available to ESI to obtain an automatic stay under RCW 48.04.020 for only this portion of the Order.

Finally, ESI argues that because the subject Order was made effective immediately, this prevents any appellant from obtaining an automatic stay. First, it is noted that various provisions throughout the insurance code require that the Commissioner provide a mandatory window of time between entry of an order and its effective date – presumably, in part, for the purpose of allowing the opportunity of obtaining an automatic stay under RCW 48.04.020(1); the insurance code simply does not require any window in this particular type of action. Second, as the Commissioner argues, RCW 48.04.020(2) provides the method whereby appellants who are not entitled to an automatic stay (such as when an order is made effective immediately) may seek a discretionary stay and may also seek a stay from superior court. ESI did not seek a stay through either means which were available to it.

For the above reasons, and after careful review of the Commissioner's OIC's Memorandum RE: Automatic Stay filed September 29, 2005 and ESI's Brief Re Mandatory Stay of Action filed September 30, 2005 and the entire hearing file,

IT IS HEREBY ORDERED that ESI's motion for grant of an automatic stay is denied and the subject Order to Cease and Desist herein, including the subject 45 day portion which is included on page 3 therein, has been effective since its stated effective date of July 26, 2005.

ENTERED at Tumwater, Washington this 23rd day of January, 2006, pursuant to Title 48 RCW, and particularly RCW 48.04.020, Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Presiding Officer